



The Servicemembers Civil Relief Act

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Overview

The Servicemembers Civil Relief Act (SCRA), formerly known as the Soldiers' & Sailors' Civil Relief Act (SSCRA), provides a wide range of protections to active duty members involved with civil matters. The SCRA applies to all military members on federal active duty. This includes the regular forces, the reserve forces, and the guard forces in Title 10 active duty. In limited circumstances, the SCRA may apply to dependents of the military member. The SCRA applies ONLY to civil matters, not to criminal actions, in all 50 states of the United States and to all territories subject to U.S. jurisdiction.

Court and Administrative Proceedings

The act allows a service member who is a party to a suit, as either Plaintiff or Defendant, and unable to appear in a court or administrative proceeding due to his or her military duties, to postpone the proceeding for a mandatory minimum of 90 days upon request. There are two ways for a stay to be ordered, a trial judge may postpone the proceedings on his or her own or the trial judge must postpone for the mandatory minimum of 90 days upon a proper request. A request must include in writing (1) why the current military duty materially affects the member's ability to appear, and (2) a letter from the commander stating that the member's duties prevent his or her appearance.

Default Judgment

Under the SCRA, a court may not enter a judgment against the service member who does not appear until the service member is appointed an attorney. The judgment will also be postponed if the service member has a defense or the attorney cannot contact the service member. Also, if a default judgment is entered, the SCRA provides for vacating the judgment. The service member must apply to reopen the case within 90 days of his or her termination or release from active duty. **Note:** Both of these protections apply only when the service member did not receive actual notice of the proceedings and do not apply if the service member chooses not to appear in court.

Automobile Leases

The SCRA allows a service member to cancel a pre-service automobile lease if he or she receives active duty orders for 180 days or more. An automobile lease entered into while the service member is on active duty can be terminated if the member receives permanent change of station (PCS) orders

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to a (1) location outside the continental U.S. or (2) deployment orders for a period of 90 days or more. To cancel a lease, the service member must send a written termination notice and a copy his or her military orders to his or her lessor and return the vehicle within 15 days after the written termination notice. The statute gives three methods of delivering the notice: (1) in-person by hand; (2) by commercial mail or package delivery services; or (3) by US mail, return receipt requested, to the address designated by your lessor. The lease is terminated effective on the day the service member surrenders the vehicle to the lessor. The lessor may not impose any penalties for early termination.

Rental Leases

Leases entered into by an active duty service member who subsequently receives orders for a PCS or a deployment for a period of 90 days or more may be terminated by the service member. To cancel a lease, the service member must send a **written** termination notice and a copy his or her military orders to his or her landlord. It is recommended that the service member obtain verification that his or her landlord received the termination notice. If the rent is paid monthly, the termination is effective 30 days after the first date on which the next rental payment is due subsequent to the date when notice is delivered. Thus, if the rent is due on the 5th of each month and notice is given on April 15th, the termination is effective on June 5th. The landlord must return any prepaid rent, along with the security deposit, and is not allowed to impose any penalties for early termination.

Contracts

SCRA provides some protections to military people with regard to contracts made *prior to* entry into the service. The member can seek a court's permission to reduce or cease payments, but must prove that military service has again *materially affected* the ability to pay. There is no termination of ultimate liability. The member is allowed to postpone payment, not avoid it altogether.

Eviction

Service members are not excused from paying rent, but the SCRA does afford some protection from eviction if military service makes rent payment difficult. In order to evict a service member, or his or her dependents, a landlord must obtain a court order by proving to the court that the service member's failure to make rent payments is not materially affected by his or her military service. This protection is available when (1) a landlord is attempting to evict an active duty service member, or his or her dependents, (2) the property is used to as a primary residence for the service member, or his or her dependents, and (3) the agreed rent does not exceed \$2,720.95/month (this amount is adjusted each year for inflation). There are other options for landlords seeking payment, see an attorney in the legal office to discuss these options.

Foreclosures (Repossession) and Forced Sales

SCRA provides protection against repossession of real and personal property purchased *prior to* entry into the military. The Seller (or his Assignee) cannot rescind the contract and repossess the property without first obtaining court order (unless the member has made a valid waiver of his rights).

Interest Payments

If, *prior to* entering the military, the member borrows money at an interest rate in excess of 6%, he or she may have the interest reduced to 6% while on active duty. As a result, monthly payments must be lowered and any interest in excess of the 6% cap must be forgiven. To receive this benefit the

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service member must provide his or her creditor with written notice and a copy of the military orders within 180 days after termination or release from active duty. The lender must reduce the interest unless it can satisfy a court that the service member's ability to pay is not *materially affected* by his or her service. For debts incurred after entry into the military, the 6% cap does not apply.

Life Insurance

Please note: SCRA protection is for individual whole, endowment, universal, or term life insurance up to \$250,000 or an amount equal to your SGLI maximum limit (whichever is greater), but does not apply to SGLI or any other group term life insurance coverage. Active duty military members may request to defer commercial life insurance premiums for his or her period of military service plus two years thereafter. If the Department of Veteran Affairs approves the request, then the policy continues in effect and the member has two years after his or her period of service to repay all premiums and interest. It is important to note that this is a deferment and not a waiver of the premiums or interest. Therefore, full payment of premiums and interest is only delayed and cannot be avoided.

Other Insurance

The SCRA provides for the reinstatement of any health insurance upon release from service if it was in effect before active duty service began and terminated during the duration of service. Reinstatement of the insurance is not subject to exclusions or a waiting period if the medical condition arose before or during the period of service. This protection does not apply to employer-offered health insurance policies covered under USERRA.

The SCRA also allows service members to suspend a professional liability policy upon entry into active duty and reinstate upon termination of active duty.

Legal Residence (Domicile)

A service member can maintain legal residence (domicile) in the state he or she resided in before entering active duty. A service member does not lose his or her legal residence when he or she is stationed in another state. Legal residence should not be confused with residence. A person can have as many residences as he or she can afford, but can have only one legal residence. A service member's legal residence is considered to be the state entered in his or her pay records; this should be a state where he or she resided at some point in time and while residing there formed the intent to return to this state after his or her military service ends and remain there indefinitely.

Federal and State Income Tax

A service member may apply to have his or her state and federal income taxes deferred, without interest or penalties, if his or her military service materially affects his or her ability to pay. Income taxes may be deferred for up to 180 days after a service member's termination or release from military service. Additionally, a service member's income does not become subject to tax in the state to which he or she is stationed, unless that is his or her legal residence. For example, if a service member is from Colorado and stationed in Massachusetts, he or she does not lose his or her status as a Colorado citizen and does not pay Massachusetts any tax on his or her military income. The service member must still pay Colorado's income tax. Additionally, Massachusetts can come after a service member's income for any off-duty employment in Massachusetts. Spouse's income taxes are regulated by a different Federal Law. For more information see the handout about taxation of military spouse's income or see an attorney. Check with the department of revenue for the state in

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question to determine what filing requirements they impose on active duty military and his or her spouses.

Property (Real and Personal) Taxes

SCRA exempts military people, absent from his or her state of legal residence by virtue of military orders, from having to pay any personal property taxes to the state in which they are stationed. For example, a serviceman from Colorado assigned to Hanscom need not pay property taxes to Massachusetts on the jeep he has with him. Moreover, if the service member is sent to Turkey and his or her dependents move to Kansas while he is gone, the jeep is not subject to property tax in Kansas. Additionally, there are protections available if the service member is unable to pay property taxes because his or her military service materially affects his or her ability to pay.

Driver's Licenses

A service member (and dependents) may be able to keep his or her driver's license from his or her home state or may have to obtain a new license from the state in which he or she is residing. Check with the driver's license department of the state in question to determine what your state requires.

Automobile Registration

A service member can register his or her automobiles in his or her home state or in the state in which he or she is now residing. This is true even if the service member and the spouse jointly own the automobile.

Statute of Limitations

The period of a person's military service is excluded in computing any period of limitations within which actions or proceedings must be brought. This benefits the service member if he or she is bringing suit, but works against him or her if he or she is a defendant. Note this protection does not apply to statute of limitations set by the Internal Revenue Code (IRS) of the United States.

Waiver of Your Rights Under the Act

A service member may waive any rights under the SCRA. Waivers are generally, but not always, only effective if made in writing *after* the service member is on active duty or has received orders to report for induction. Waivers made prior to that time are unenforceable. It is recommended that any service member considering waiving any protection provided by the SCRA make an appointment with an attorney in the legal office to ensure understanding of the risks of a waiver.

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